Irawadi bin Mohammad v Public Prosecutor

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COURT OF APPEAL (PUTRAJAYA) — CRIMINAL APPEAL NO B-05–310 OF 2009
ZALEHA ZAHARI, SULAIMAN DAUD AND CLEMENT SKINNER JJCA
1 JUNE 2012

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Criminal Law — Murder — Conviction and death sentence — Appeal against — Whether prima facie case made out against accused — Whether prosecution's case proven beyond reasonable doubt — Whether third trial judge directed his mind on right issues and drawn correct inferences from proved and admitted facts — Penal Code s 302

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Criminal Procedure — Retrial — Murder — Conviction and death sentence — Appeal against — Transfer of trial judges — First trial judge who heard prosecution's witnesses transferred to Putrajaya — Second trial judge heard submissions and made finding of prima facie case against appellant — Third trial judge heard defence's case and concluded with finding of guilt and conviction — Whether entire trial was mistrial — Whether retrial necessary — Whether preponderance of justice against, or in favour, of retrial — Powers of appellate court to order retrial — Criminal Procedure Code s 316 (a) & (b)

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The appellant was tried and convicted under s 302 of the Penal Code for causing the death of Norzi Ayu bt Mohd Noor. The mandatory death sentence was imposed upon him. The record of the case showed a slow pace of trial at the High Court which was contributed by the prosecution, defence, as well as by reason of the transfer of trial judges and long dates given for the many adjournments. The trial which commenced in October 2005, was heard by the first trial judge who heard all of the prosecution's witnesses. By reason of the first trial judge being posted to Putrajaya with effect from 18 July 2007, with the consent of all parties, the case was transferred before another High Court judge. The second trial judge heard the submissions of the deputy public prosecutor ('DPP') and the defence to make a finding whether the prosecution had made a prima facie case against the appellant. On 19 June 2008, the second trial judge delivered her decision that the prosecution had proved a prima facie case against the appellant and called upon him to enter his defence. As the second judge was no longer serving at Shah Alam High Court on the continued hearing date of 3 November 2008, the case was called before another judge. On this date, the DPP informed the court that the practicing certificate of the defence counsel appearing for the appellant had been cancelled and that he was barred from practicing as an advocate and solicitor. At the request of the

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A appellant a new counsel was duly appointed in May 2009 to represent the appellant. The third trial judge then heard the defence's case and concluded with a finding of guilt and conviction, which was the subject matter of appeal before this court. It was contended, inter alia, that the entire trial was a mistrial as the appellant had been deprived of the reasoning of the second judge who B had conducted the case. The appellant further contended that he had been deprived of a fair trial because without the audio-visual advantage of observing the demeanour or the body language of the prosecution's witnesses it was difficult for both the second and third trial judges to resolve issues relating to the credibility of key witnesses, for instance, SP4 and SP5 who were together C with the appellant in the flat of the deceased that fateful day in question. Hence, the appellant contended that the entire trial was a mistrial and therefore, urged the court to set aside the decision of the High Court and to direct a retrial. The issue before the court was whether the error or irregularity complained of was of such a nature that it could be considered to be fatal and D prejudicial to the appellant warranting a retrial.

Held, dismissing the appeal and affirming the conviction and sentence:

(1) Notwithstanding the 'fractured' trial, the appellant had been accorded a E fair trial. The defence was represented throughout by competent counsel, and when not, another was appointed in his place. No complaint was made as to conduct of the three trial judge's in the handling of the case during the course of the hearing. A full transcript of the evidence had been recorded (see para 16).

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(2) On the absence of the reasoning of the second trial judge in finding that the prosecution had made out a prima facie case, and the third trial judge in his judgment making an appraisal of the evidence and making a second ruling that a prima facie case had been made out, the two rulings were not G of such a nature that it vitiates the whole trial. The second trial judge, when ruling that a prima facie case had been made out against the appellant, had expected, in all probability, to be able to give her reasons for doing so when she came to write her judgment at the conclusion of the case. Unfortunately, due to the second trial judge having been transferred and no longer the presiding judge, she was unable to do so. H The third trial judge took over the hearing of this case until its conclusion. In the particular circumstances of this case, it was the court's view that the two rulings were not of such a feature and nature that vitiated the whole trial or caused a miscarriage of justice (see paras 17–18).

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(3) When a defence is called, the court does not immediately give the accused person its reasons for doing so. Further, attention was drawn to the fact that on those occasions where the prosecution has appealed against a ruling that a prima facie case has not been established against an accused

person, and the appellate court allows the appeal, the case sent back to the trial court with a direction that the defence be called. In such instances, an accused person is none the wiser as to why his defence is called as the appellate court does not normally give its reasons for its finding that a prima facie case has been made out against an accused person, and the lack of such reasons is not open to attack as occasioning a failure of justice (see para 19).

(4) The third trial judge had directed his mind on the right issues and had drawn correct inferences from the proved and admitted facts. The third trial judge was right in finding that the appellant had not raised a reasonable doubt on the prosecution's case and that the case against the appellant had been proved beyond any reasonable doubt. In short, the third trial judge had correctly assessed the totality of the case, and arrived at the conclusion which he did (see paras 29–30).

[Bahasa Malaysia summary

Perayu telah dibicarakan dan disabitkan di bawah s 302 Kanun Keseksaan kerana menyebabkan kematian Norzi Ayu bt Mohd Noor. Hukuman mati mandatori telah dijatuhkan ke atasnya. Rekod kes ini menunjukkan kadar perlahan perbicaraan di Mahkamah Tinggi telah disebabkan oleh pendakwaan, pembelaan, serta oleh sebab pemindahan hakim-hakim bicara dan tarikh-tarikh yang diberikan untuk penangguhan adalah lama. Perbicaraan yang bermula pada bulan Oktober 2005, telah didengar oleh hakim bicara pertama yang mendengar kesemua saksi pendakwaan. Atas sebab hakim bicara pertama yang ditukarkan ke Putrajaya berkuat kuasa mulai 18 Julai 2007, dengan persetujuan kesemua pihak, kes tersebut telah dipindahkan ke hadapan hakim Mahkamah Tinggi yang lain. Hakim bicara kedua mendengar hujahan timbalan pendakwa raya ('TPR') dan pembelaan untuk membuat dapatan sama ada pihak pendakwaan telah membuktikan kes prima facie terhadap perayu. Pada 19 Jun 2008, hakim bicara kedua memutuskan bahawa pihak pendakwaan telah membuktikan kes prima facie terhadap perayu dan memanggilnya untuk memasukkan pembelaan. Oleh kerana hakim kedua tidak lagi berkhidmat di Mahkamah Tinggi Shah Alam pada tarikh perbicaraan berterusan iaitu 3 November 2008, kes tersebut telah didengar di hadapan hakim yang lain. Pada tarikh ini, TPR memaklumkan kepada mahkamah bahawa sijil amalan peguambela yang mewakili perayu telah dibatalkan dan bahawa dia terhalang daripada beramal sebagai seorang peguambela dan peguamcara. Atas permintaan perayu, peguam baru telah dilantik pada Mei 2009 untuk mewakili perayu. Hakim bicara ketiga kemudian mendengar kes pembelaan dan menyimpulkan dapatan bersalah dan sabitan, yang merupakan hal perkara rayuan di hadapan mahkamah ini. Adalah ditegaskan, antara lain, bahawa keseluruhan pengadilan perbicaraan adalah perbicaraan silap kerana perayu telah dinafikan dengan alasan–alasan hakim kedua yang telah membicarakan kes ini. Perayu turut menegaskan bahawa dia telah dinafikan

hak perbicaraan yang adil kerana tanpa kelebihan audio visual memerhatikan tingkah laku atau bahasa tubuh saksi pendakwaan, adalah sukar untuk kedua-dua hakim bicara kedua dan ketiga untuk memutuskan isu-isu berkaitan kredibiliti saksi-saksi utama, contohnya, SP4 dan SP5 yang bersama-sama dengan perayu di flat si mati pada hari malang tersebut. Oleh itu, perayu menghujahkan bahawa keseluruhan pengadilan perbicaraan adalah perbicaraan silap dan oleh itu, menggesa mahkamah ini untuk mengetepikan keputusan Mahkamah Tinggi dan mengarahkan perbicaraan semula. Isu di hadapan mahkamah ini adalah sama ada kesilapan atau ketidakteraturan yang diadukan adalah sedemikian jenisnya sehingga dianggap boleh menjejaskan dan memprejudiskan perayu hingga mewajarkan perbicaraan semula.

Diputuskan, menolak rayuan dan mengesahkan sabitan dan hukuman:

(1) Tanpa mengira perbicaraan yang 'retak', perayu telah diberikan perbicaraan yang adil. Pihak pembelaan diwakili sepanjang perbicaraan oleh peguam yang berwibawa, dan apabila tidak diwakili, satu lagi dilantik menggantikannya. Tiada aduan telah dibuat ke atas perlakuan ketiga-tiga hakim bicara dalam pengendalian kes ini sepanjang perbicaraan. Satu transkrip penuh mengenai keterangan telah direkodkan (lihat perenggan 16).

(2) Mengenai ketiadaan sebab hakim bicara kedua dalam memutuskan bahawa pihak pendakwaan telah membuktikan kes prima facie, dan hakim bicara ketiga dalam penghakiman beliau membuat penilaian bukti dan membuat keputusan kedua bahawa kes prima facie telah dibuat, kedua-dua keputusan tidak sedemikian sifatnya sehingga merosakkan keseluruhan perbicaraan. Hakim bicara kedua, dalam memerintahkan bahawa kes prima facie telah dibuat terhadap perayu, telah dijangka, dalam kesemua kebarangkalian, untuk mampu memberikan sebab-sebab beliau untuk berbuat demikian apabila beliau menulis penghakiman di akhir kes tersebut. Malangnya, oleh kerana hakim bicara kedua telah dipindahkan dan bukan lagi hakim bicara bagi kes tersebut, beliau tidak dapat berbuat demikian. Hakim bicara ketiga telah mengambil alih perbicaraan kes ini sehingga tamat. Dalam keadaan tertentu kes ini, adalah menjadi pandangan mahkamah bahawa kedua-dua keputusan tidak berciri atau bersifat yang mana merosakkan keseluruhan perbicaraan atau menyebabkan ketidakadilan (lihat perenggan 17–18).

(3) Apabila pembelaan dipanggil, mahkamah tidak segera memberikan tertuduh-tertuduh alasan-alasannya untuk berbuat demikian. Di samping itu, perhatian telah dihalakan kepada fakta bahawa pada keadaan-keadaan di mana pihak pendakwaan telah merayu terhadap keputusan bahawa kes prima facie telah tidak dibuktikan terhadap seseorang yang dituduh, dan mahkamah rayuan membenarkan rayuan

tersebut, kes tersebut dihantar semula ke mahkamah perbicaraan dengan arahan bahawa pihak pembelaan akan dipanggil. Dalam keadaan sedemikian, tertuduh tidak mengetahui mengapa pembelaannya dipanggil kerana mahkamah rayuan biasanya tidak memberikan alasan bagi dapatannya bahawa kes prima facie telah dibuat terhadap seseorang tertuduh, dan kekurangan sebab tersebut tidak terbuka untuk sebarang debat sebagai kegagalan keadilan (lihat perenggan 19).

(4) Hakim bicara ketiga telah mengarahkan fikiran beliau ke arah isu-isu yang betul dan telah membuat kesimpulan yang betul daripada fakta-fakta yang terbukti dan diterima. Hakim bicara ketiga adalah betul dalam dapatannya bahawa perayu tidak menimbulkan keraguan yang munasabah terhadap kes pendakwaan dan bahawa kes terhadap perayu telah dibuktikan melampaui sebarang keraguan munasabah. Pendek kata, hakim bicara ketiga telah dengan betul menilai keseluruhan kes tersebut, dan mencapai kepada keputusan yang dibuatnya (lihat perenggan 29–30).]

Cases referred to

PP v Mohd Radzi bin Abu Bakar [2005] 6 MLJ 393, FC (refd)

Legislation referred to

Criminal Procedure Code ss 180, 316(a), (b)
Penal Code s 302

Appeal from: Criminal Trial No 45–80 of 2004 (High Court, Shah Alam)

Hisham Teh Poh Teik (Imran Hadzali Abd Hamid with him) (Elida Imran & Partners) for the appellant.
Fatnin Yusof (Deputy Public Prosecutor, Attorney General's Chambers) for the respondent.

Zaleha Zahari JCA:

[1] The appellant was tried before the Shah Alam High Court for murder in causing the death of Norzi Ayu bt Mohd Noor. On 11 November 2009 the appellant was convicted under s 302 of the Penal Code and the mandatory sentence of death was imposed upon him. Hence this appeal.

[2] In view of the arguments of the appellant's counsel at the hearing of this appeal it is necessary to set out in brief the development of this case at the High Court and just before the hearing of this appeal before us.

[3] The record shows the slow pace of trial at the High Court was equally contributed by the prosecution, defence, as well as by reason of the transfer of

trial judges and long dates given for the many adjournments. The trial commenced in October 2005. The prosecution had called 20 witnesses to testify in support of their case. The first trial judge had finished hearing all 20 of them. The minutes dated 16 July 2007 states that, by reason of the first trial judge being posted to Putrajaya with effect from 18 July 2007, with the consent of all parties, the first trial judge had the case transferred to another court (ie Court 4) for the case to be continued for hearing before another High Court judge.

[4] At that stage it was incumbent upon the succeeding judge who had conduct of the case to hear the submissions of the DPP and the defence counsel and to make a finding whether the prosecution had made a prima facie case against the appellant. The second trial judge duly did so. She heard the submissions and delivered her decision on 19 June 2008. The second trial judge ruled that the prosecution had proved a prima facie case against the appellant and called upon him to enter his defence. As to her reasoning in making the decision which she did, there is no record of her reasoning in the notes of evidence neither was there any written grounds. The appellant's counsel stressed the fact that the second trial judge in the situation she was in, did not have the benefit of hearing the prosecution witnesses in arriving at the decision which she did. The case was then fixed for continued hearing on 3 November 2008 and 4 November 2008 for the hearing of the defence.

[5] The record then shows that, as the second judge was no longer then serving at Shah Alam High Court on the continued hearing date of 3 November 2008, the case was called before another judge. On this date the DPP informed the court that the practicing certificate of the defence counsel appearing for the appellant had been cancelled and that he was barred from practicing as an advocate and solicitor. On this date the appellant informed the court that he would like the trial to be continued before the first trial judge. The record shows that the appellant was informed that he was required to appoint another counsel to represent him; alternatively, asked whether he wanted a court appointed counsel. The appellant requested for a court appointed counsel. This development of course necessitated an adjournment. A new counsel was duly appointed in May 2009 to represent the appellant.

[6] In relation to the appellant's request that the case be continued before the first trial judge, we note that, in his judgment, the third trial judge stated there was nothing he could do. The third trial judge then heard the defence's case; at the end of trial, the submissions, which concluded with a finding of guilt and conviction, which decision is the subject matter of appeal before us.

[7] The initial memorandum of appeal dated 11 March 2010 was directed against the decision of the third trial judge on its merits. Be that as it may vide

notice of motion in encl (13) and thereafter in encl (15), which was not objected to by the DPP, and allowed by the court on the date of hearing of the appeal on 19 October 2011, additional grounds were added. The additional grounds were, that the third trial judge had misdirected himself when he ruled in his written grounds that the prosecution has proved a prima facie case when there already existed an earlier ruling by the second trial judge. By reason thereof it was contended the entire trial was a mistrial as the appellant had been deprived of the reasoning of the second judge who had conduct of this case. It was then contended that the appellant had been deprived of a fair trial.

[8] We did not have the benefit of hearing the arguments of the appellant's counsel on the grounds advanced in the original memorandum of appeal as his arguments were confined to the new grounds added on the date of hearing of the appeal. As for the DPP's written submissions, understandably, it was directed to the merits of the case and did not address the grounds added on the date of hearing. We accordingly did not get much assistance from the DPP's submission on the express issue which formed the main thrust of the appellant's submissions.

THE APPELLANT'S SUBMISSIONS

[9] The appellant's counsel submitted that the appellant had been severely prejudiced by reason of the trial being 'fractured' and that such a 'fractured' trial was not a fair trial, but a mistrial. According to him the appellant was also disadvantaged as he did not know why his defence was called by the second judge who only heard submissions and who did not have the audio-visual advantage of hearing the prosecution's witnesses. The appellant was surely entitled to know the reasons why his defence was called, especially in a capital charge.

[10] He stressed the fact that the third trial judge also did not have the benefit of hearing the testimony of the prosecution's witnesses, was not the person who heard the submissions of the defence counsel and that of the DPP at the end of the prosecution's case, as well as the fact that the second trial judge had already made a ruling that the prosecution had made a prima facie case against the appellant and called upon the appellant to enter his defence. His reading of the third trial judge's judgment was that the third trial judge had reviewed the earlier ruling made by the learned second trial judge in calling for defence, and made another ruling to the same effect by testing the evidence of the prosecution's witnesses which he himself did not hear.

[11] According to the appellant this was a misdirection, that it was not legally permissible for the third trial judge to rule a second time and give reasons why a prima facie case had been proven. Like the second trial judge, the third trial

judge equally did not enjoy the audio-visual advantage which the first trial judge had over the witnesses for the prosecution. The second and third trial judges were only left with the cold print of the notes of evidence. He submitted that without the audio-visual advantage of observing the demeanour or the body language of the prosecution's witnesses it was difficult for both the second and third trial judges to resolve issues relating to the credibility of key witnesses, for instance, SP4 (Azman bin Mat Zain) and SP5 (Amri Sardi bin Yusof) who were together with the appellant's in the flat of the deceased that fateful day in question.

[12] The appellant counsel was of the view that the entire trial was a mistrial. He urged this court to set aside the decision of the High Court and to direct a retrial.

DECISION

[13] We have given the arguments raised by the appellant's counsel our very anxious consideration. The question we have to answer, is whether the error or irregularity complained of was of such a nature that it can be considered to be fatal and prejudicial to the appellant warranting a retrial? The powers of an appellate court to order a retrial is found in s 316(a) and (b) of the Criminal Procedure Code. It is a discretionary power.

[14] A fresh trial means that everything would have to start afresh. All evidence are required to be tendered afresh to be decided upon by a new trial judge. There is no given yardstick to guide an appellate court as to when it should, or should not, order a retrial. Ultimately it is largely dependent on an appellate court's perception of what is the interest of justice of the case before it, and whether the preponderance of justice is against, or in favour, of a retrial.

[15] Our view is that the interest that is to be served by the power to order a retrial must be in the interests of the public. There are of course countervailing interests of justice which must be taken into consideration. The nature and strength of these will necessarily vary from case to case. We also had to bear in mind that the interests of the public is also best served if persons who are guilty of serious crimes be brought to justice and not be allowed to escape because of technicalities in the conduct of trial.

[16] We must concede that such a 'fractured' trial as in this case was certainly not to be repeated. Be that as it may, in our considered opinion after careful perusal of the record, notwithstanding the 'fractured' trial, the appellant had been accorded a fair trial. The defence was represented throughout by competent counsel, and when not, another was appointed in his place. No

complaint was made as to conduct of the three trial judge's in the handling of the case during the course of the hearing. A full transcript of the evidence had been recorded.

[17] On the absence of the reasoning of the second trial judge in finding that the prosecution had made out a prima facie case, and the third trial judge in his judgment making an appraisal of the evidence and making a second ruling that a prima facie case had been made out, we are of the view that the two rulings were not of such a nature that it vitiates the whole trial.

[18] Generally speaking under s 180 of the Criminal Procedure Code, a trial judge is not required to give his reasons when ruling that a prime facie has been established against a person (see the decision of the Federal Court in *Public Prosecutor v Mohd Radzi bin Abu Bakar* [2005] 6 MLJ 393). In our view the second trial judge, when ruling that a prima facie case had been made out against the appellant, had expected, in all probability, to be able give her reasons for doing so when she came to write her judgment at the conclusion of the case. Unfortunately, due the second trial judge having been transferred and no longer the presiding judge, she was unable to do so. The third trial judge took over the hearing of this case until its conclusion. In the particular circumstances of this case, it is our view that the two rulings are not of such a feature and nature that vitiated the whole trial or caused a miscarriage of justice.

[19] The appellant complained that he was disadvantaged as he did not know why his defence was called by the second trial judge. We do not agree with this submission. As we indicated earlier, when a defence is called, the court does not immediately give the accused person its reasons for doing so. Further, we draw attention to the fact that on those occasions where the prosecution has appealed against a ruling that a prima facie case has not been established against an accused person, and the appellate court allows the appeal, the case is sent back to the trial court with a direction that the defence be called. In such instances, an accused person is none the wisher why his defence is called as the appellate court does not normally give its reasons for its finding that a prima facie has been made out against an accused person, and the lack of such reasons is not open to attack as occasioning a failure of justice.

[20] Due recognition must be given to the fact that it was incumbent on the third trial judge at the conclusion of the case for the defence to reasonably, properly and judicially consider the defence in the light of the prosecution's case and come to a decision on the totality of the evidence adduced before the court, to arrive at a decision whether the prosecution had proved its case beyond reasonable doubt. In our view it was for this reason the third trial judge did what he did, to appraise the evidence for the prosecution in the light of the defence's evidence, and to then test the impact of the latter on the former to

A determine whether the defence had succeeded in raising a reasonable doubt in the prosecution's case. The fact that the third trial judge worded it in the manner which he did in his judgment, in our considered opinion, was not a matter warranting a retrial.

B **[21]** In our view, the proper course of action for us to take in this case was to scrutinise the evidence and to determine whether the evidence support the findings of the respective trial judge at the respective stage, firstly, at the end of the prosecution's case, ie whether the defence was rightly called, secondly, whether the High Court was right in the consideration of the defence in
C arriving at the conclusion which it did.

[22] This case involved personal violence resulting in death. The prosecution had clearly proved the first ingredient of the charge. The death of Norzi Ayu bt
D Mohd Noor was confirmed by the attending medical officer ('SP14') and the investigating officer ('SP19'). The post mortem report (exh P42) and the testimony of the forensic pathologist SP16 confirmed that the deceased suffered massive blood loss due to injury to the main blood vessels (*inferior vena cava*) in the abdomen caused by stabbing with a sharp weapon.

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[23] As to who stabbed the deceased, there was no eye witnesses who saw the appellant stabbing the deceased and cause the fatal injuries arising from which she died. Be that as it may we are of the view that there was sufficient
F circumstantial evidence to show it was indeed the appellant that had stabbed the deceased.

[24] The recovery of a broken chainsaw piece at the front entrance of the flat established that someone had broken and entered into the deceased's flat. SP4's
G presence at the deceased's flat was in response to a note (exh P13), as testified by SP6, which the deceased herself threw out to her, which note pleaded with SP6 to call the person named in the note ('ie SP4') to come over to the deceased's flat urgently. Upon entry into the deceased's flat, SP4 was confronted with the appellant holding a knife. That the appellant, still holding the knife, had locked
H himself in the bedroom for about 5–10 minutes together with the deceased, then, what SP4 found when he opened the bedroom door, the deceased lying injured on the bed.

[25] SP4 and SP5's testimony of the appellant managing to get out of the
I bedroom, of SP5 attempting to prevent the appellant escaping by keeping the grill closed, the appellant swinging the knife he was holding towards SP5 ('acah-acah pisau ke arah saya') were all very significant. SP5 had testified that the appellant escaped holding the bloodstained knife. SP5 and SP8 had chased him to a nearby river where the appellant managed to hide in some bushes.

[26] In our considered opinion the non-recovery of the knife was not fatal in view of the third trial judge's acceptance of SP4 and SP5's testimony that the appellant was seen holding a knife on the date and time in question, and running away with a blood stained knife. Taken as a whole, we are of the view the third trial judge was right in his reasoning that the evidence all point to the conclusion that the appellant was the person who had stabbed the deceased. The statement of the deceased to the medical officer SP14 that the appellant as the person who had attacked her, in our view, was correctly ruled as a dying declaration.

[27] On the issue of whether the appellant had the intention to kill, the evidence of SP13 states that upon examination there were two closely positioned and deep stab wounds to the deceased's abdomen. The post mortem report (exh P42) and the evidence of the forensic pathologist, SP16, states that the fatal injury inflicted was to the deceased abdomen. The *inferior vena cava*/the main blood vessel was punctured. The puncture to the *inferior vena cava* was 1.5 cm in diameter indicating that the weapon used was sharp and long. The injuries had resulted in massive blood loss which was difficult to stem, which ordinarily would cause death. The deceased died on the operating table a few hours after being brought to the hospital.

[28] The depth and nature of the injury as testified by the forensic pathologist and the medical examiner was accepted as evidence that the injury was intentionally inflicted on the deceased by the appellant and not accidental. Any suggestion that the death of the deceased was due to negligence of the doctors who attended to the deceased at the hospital was rejected. We are of the view that the third trial judge's appraisal of the evidence was correct and so too were the findings which he arrived at. The defence was in this case rightly called, by the second trial judge for the reasons stated by the third trial judge.

[29] As to whether the defence had raised a reasonable doubt against the prosecution's case, the defence was that there was no intention to kill and that the appellant had stabbed the deceased accidentally. The third trial judge rejected the appellant's defence as fictional for the reasons stated in his judgment. Our view on this issue is that he was right. He had correctly assessed the totality of the case, and in arriving at the conclusion which he did.

[30] To sum up, we find that the third trial judge had directed his mind on the right issues and had drawn correct inferences from the proved and admitted facts. The third trial judge was right in finding that the appellant had not raised a reasonable doubt on the prosecution's case and that the case against the appellant had been proved beyond any reasonable doubt.

[31] For the above reasons we dismissed the appeal and confirmed the decision of the third trial judge.

Appeal dismissed and conviction and sentence affirmed.

Reported by Ashgar Ali Ali Mohamed